

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

M. ZELL WILLIAMS,	:	
	:	NO. 1:04-CV-00675
Plaintiff,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
ZUMBIEL BOX AND PACKAGING	:	
COMPANY,	:	
	:	
Defendant.	:	

On September 29, 2004, Plaintiff M. Zell Williams ("Williams"), an African-American male, filed a pro se Complaint against his former employer Zumbiel Box and Packaging Company ("Zumbiel"), alleging racial discrimination in violation of Title VII of the Civil Rights Act and the United States Constitution (doc. 1). On February 22, 2005, Defendant filed a motion for summary judgment in its favor on all claims (doc. 16), and the parties fully briefed the motion (doc. 18, 19, 20). On May 11, 2005, the assigned Magistrate Judge issued a Report and Recommendation recommending that Defendant's motion be granted in part and denied in part (doc. 21). Zumbiel filed objections to the Report and Recommendation on May 23, 2005, and Williams failed to respond thereto within the prescribed time. Accordingly, the matter is fully briefed and ripe for decision.

Upon de novo review, the Court finds the Magistrate Judge's Report and Recommendation well reasoned and proper. Title

42 U.S.C. § 2000e-5(f)(1) requires an individual to file a Title VII action in federal court within ninety days upon receipt of his Notice of Right to Sue from the Equal Employment Opportunity Commission ("EEOC"). Plaintiff avers that his notice was mailed to the wrong address; as a result, he claims that he did not receive the notice until eighteen days after the mailing date. As a threshold matter, Williams's bare assertion that the document was mailed to the wrong address is insufficient to demonstrate that equitable concerns excuse his failure to file within the statutory 90-day period. See, e.g., Truitt v. County of Wayne, 148 F.3d 644, 647 (6th Cir. 1998). Even assuming, arguendo, that this allegation is true, his 90-day filing period would have ended on August 27, 2004. It is undisputed that he waited until September 29, 2004 to file his Complaint, well beyond the latest arguable filing deadline. Accordingly, his Title VII claim is time barred.

As to Williams's 42 U.S.C. § 1981 claim - the subject of Zumbiel's objections - the Court recognizes that he failed to cite the statutory provision expressly in his Complaint. However, the Court agrees with the Magistrate Judge that his failure to invoke § 1981 with specificity in his Complaint is not fatal to this claim if the allegations are sufficient to state a claim for relief under the statute. Given that the pleadings of pro se litigants are held to less stringent standards than pleadings drafted by attorneys, see e.g. Montgomery v. Huntington Bank 346 F.3d 693, 698 (6th Cir.

2003), the Court finds that the Complaint alleges racial discrimination in private employment sufficient to state a claim for relief under 42 U.S.C. § 1981. See Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 450-60 (1975); Williams v. United Dairy Farmers, 20 F.Supp. 2d 1193, 1202 (S.D. Ohio. 1998).

For the foregoing reasons, Defendant's Objections (doc. 22) are OVERRULED. The Magistrate Judge's Report and Recommendation (doc. 21) is ADOPTED IN ITS ENTIRETY. Defendant's Motion For Summary Judgment (doc. 16) is GRANTED IN PART and DENIED IN PART, to wit: Defendant's motion as to Plaintiff's Title VII claim is GRANTED, and Defendant's motions to Plaintiff's 42 U.S.C. § 1981 claim is DENIED. The Court hereby SCHEDULES a final pre-trial conference in this instant case for September 28, 2005 at 3:00 p.m. The Court hereby SCHEDULES a jury trial of the instant case to commence on November 8, 2005 at 9:30 a.m on an on-deck basis.

SO ORDERED.

Dated: August 22, 2005

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge